Simon v. Adzilla, Inc [New Media] et al Doc. 108

Scott R. Mosko (State Bar No. 106070)
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
Stanford Research Park
3300 Hillview Avenue
Palo Alto, California 94304
Telephone: (650) 849-6600
Facsimile: (650) 849-6666

Attorneys for Defendants
Pacific Northwest Software, Inc. and
Winston Williams

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FACEBOOK, INC. and MARK ZUCKERBERG,

Plaintiffs,

v.

CONNECTU LLC, (now known as CONNECTU INC.) CAMERON WINKLEVOSS, TYLER WINKLEVOSS, DIVYA NARENDRA, PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA, and DOES 1-25,

Defendants.

CASE NO. C 07-01389 RS

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' PROPOSED EVIDENCE SUBMITTED IN SUPPORT OF ITS OPPOSITION TO MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION.

Date: July 11, 2007
Time: 9:30 a.m.
Dept.: 4
Judge: Honorable Richard Seeborg

Dockets.Justia.com

Plaintiffs submitted 35 exhibits in support of their opposition to Defendants' Motion to Dismiss for Lack of Personal Jurisdiction. Below, Defendants submit a chart listing certain exhibits, and raising objections to them. When a defendant asserts that a court cannot assert personal jurisdiction over him, the plaintiff has the burden to submit competent non-hearsay prima facie evidence that would support a finding for the assertion of personal jurisdiction. *Calloway Golf Association v. Royal Canadian Golf Association*, 125 F.Supp.2d 1194, 1202 (C.D.Cal. 2000) "Prima facie" means "substantial independent evidence, other than hearsay." *United States v. Dixon*, 562 F.2d 1138, 1141 (9th Cir. 1977) citing *United States v. Calaway*, 524 F.2d 609, 612 (9th Cir. 1975). The exhibits referenced below do not and cannot qualify as "prima facie" evidence supporting the assertion of jurisdiction over moving Defendants.

Plaintiffs' Submitted Proposed Evidence.	**Objections to Proposed Evidence.**
Cooper Dec. Ex. 2 - email from Adam Philip Scheider to Mark Zuckerberg, dated February 29, 2004, Bates labeled FACE000897-99	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.
Cooper Dec. Ex. 5 - February 24, 2005 Harvard Crimson article, Bates labeled C006186-96	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.
Cooper Dec. Ex. 6 - July 2, 2005 Wired article titled "Finding Friends with Facebook"	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.
Cooper Dec. Ex. 10 - documents produced by iMarc in the Massachusetts matter on September 26, 2006, Bates labeled iMarc000012, iMarc000622-24, iMarc000659, iMarc000798	Each document in Exhibit 10 is hearsay, lacks foundation and is unauthenticated. There is no expert testimony providing any opinion regarding these documents. Specifically, regarding the print out of what appears to be an email from David Tuffs to nick@imarc.net and marc@imarc.net. (Cooper Decl. Exh.

	10) Plaintiffs fail to provide any foundation as to who these people are. The statements in this email are pure hearsay. While the print out identifies what appears to be over 500 email addresses, there is no competent evidence or foundation that ties this document to moving Defendants, or that moving Defendants had any involvement with unsupported claims made in this document.
Cooper Dec. Ex. 14 - documents produced by ConnectU in the Massachusetts matter, Bates labeled C003865-69, C004243, C004299-300, C006535-36, C006537, C007512-7517, C008392, C008657, C008658, C008662, C008674, C009768-69, C009887-96, C010359, C011039-40, C011073-82	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.
Cooper Dec. Ex. 18 - documents produced by David Gucwa on March 12, 2007, Bates labeled GUCWA0018-26; 0048, 0056-63, 0075-115, 0117, 0124, 0134	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.
Cooper Dec. Ex. 19 - documents produced by Pacific Northwest Software, Bates labeled PNS000015-16, PNS000226, PNS000386-90, PNS000398-400, PNS000441, PNS000768-70, PNS000842-43, PNS001144-49, PNS001215-16, PNS001238-39, PNS001759-65, PNS01766-77, PNS01844-56, PNS01848, PNS02096, PNS0281469-73., PNS0310177-79, PNS0310185-86, PNS0310455, PNS0571134-49	Each document in Exhibit 10 is hearsay, lacks foundation and is unauthenticated. There is no expert testimony providing any opinion regarding these documents. Specifically, regarding certain pages of what appears to be computer script that are unauthenticated and lack foundation. (Cooper Decl. Exh. 19, at 310177, 310455, 310185 - 86, 310177 - 79, 281469 - 73) There is no evidence this script was run, or that moving Defendants had anything to do with it. Plaintiffs conclusions as to the effect of this script are unsupported and lack foundation.
Cooper Dec. Ex. 20 - Wayne Chang's profile on www.linkedin.com indicating that he joined Pacific Northwest Software in 2002; emails authored in 2003 by Chang on behalf of Pacific Northwest Software, and printouts from Pacific Northwest Software's website from 2004 through the present showing Chang was employed by Pacific Northwest Software during this period	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.

Cooper Dec. Ex. 24 - "contact us" page at www.webquarry.com, indicating it is a California company	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to or show that any information in this document was known by moving Defendants.
Cooper Dec. Ex. 25 - documents produced by ConnectU, Bates labeled CUCA001380-83	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.
Cooper Dec. Ex. 26 - documents produced by ConnectU, Bates labeled CUCA000172 and CUCA02972	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.
Cooper Dec. Ex. 27 - Pacific Northwest Software homepage at www.pnwsoft.com	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document.
Cooper Dec. Ex. 28 - "Our People" page at www.recordsportal.com/content/people.html	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.
Cooper Dec. Ex. 29 - printout from www.000domains.com showing that Pacific Northwest Software is the administrative and technical contact for the Records Portal domain at https://secure.reisterapi.com/services/whois.php	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.
Cooper Dec. Ex. 30 - press release from Pacific Northwest Software's website announcing its development deal with Chula Vista Elementary School District at www.pnswsoft.com/?page=pr/072605, dated July 26	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document.
Cooper Dec. Ex. 31- press release from Pacific Northwest Software's website Examkrackers at www.pnwsoft.com/?page=pr/010606, dated January 1, 2006	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document.
Cooper Dec. Ex. 32 - press release from Pacific Northwest Software's website announcing its development deal with Know the Course at www.pnwsoft.com/?page=pr/031406, dated March 14, 2006	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document.

Cooper Dec. Ex. 33 - press release from Pacific Northwest Software's website announcing its development deal with City Ticket Exchange at www.pnwsoft.com/?page=pr/081006, dated August 10, 2006	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document.
Cooper Dec. Ex. 34 - Google, Inc. Advertising Program Terms at https://adwords.google.com.select/TCUbilling0806.html, dated August 22, 2006	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.
Cooper Dec. Ex. 35 - Craigslist Terms of Use page at www.craigslist.org/about/terms.of.use.html	Hearsay; lacks foundation. Plaintiffs fail to authenticate this document. This document is irrelevant to the issues related to personal jurisdiction. It further fails to tie any alleged acts to moving Defendants.

Respectfully submitted,

Dated: July 6, 2007

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

By: /s/

Scott R. Mosko
Attorneys for Pacific Northwest Software Inc. and Winston Williams